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Prism Communication Services, Inc.  
1667 K Street, N.W. - Suite 200  
Washington, DC 20006  
(202) 263-7979 TEL  
(202) 263-7978 FAX

November 8, 1999

BY HAND DELIVERY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: FCC Docket No. 99-295

Dear Ms. Salas:

On behalf of Prism Communication Services, Inc. ("Prism"), we are submitting herewith an original and four (4) copies of its Reply Comments in the above-referenced proceeding.

Any questions regarding this matter should be directed to the undersigned counsel.

Sincerely,



Julie A. Kaminski  
Deputy Chief Counsel - Telecommunications

/mjs  
Attachments

cc: Attached Service List

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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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In the Matter of )  
 )  
Application by New York Telephone )  
Company (d/b/a Bell Atlantic – )  
New York), Bell Atlantic Communications, )  
Inc., NYNEX Long Distance Company, )  
And Bell Atlantic Global Networks, Inc. )  
For Authorization to Provide In-Region, )  
InterLATA Services in New York )

CC Docket No. 99-295

**REPLY COMMENTS OF PRISM COMMUNICATION SERVICES, INC.**

Respectfully submitted,

**PRISM COMMUNICATION SERVICES, INC.**

Randall B. Lowe, Chief Legal Officer

Julie A. Kaminski, Deputy Chief Counsel  
– Telecommunications

Renée R. Crittendon, Deputy Chief Counsel  
– Telecommunications

November 8, 1999

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## **SUMMARY OF THE ARGUMENT**

The comments filed in this proceeding make clear that Bell Atlantic has neither irreversibly opened the New York market to competition nor therefore met its burden in showing that it has met the requirements of Section 271. This is particularly true as regards advanced services. The comments are rife with examples of the ordering, provisioning and maintenance nightmares experienced by advanced services CLECs. Although Prism is hopeful that the proceedings taking place at the New York Public Service Commission will serve to reduce or eliminate the problems experienced by advanced services providers such as Prism, the results to date are far from reassuring.

The Commission must ensure that Bell Atlantic complies with the requirements of Section 271 with respect to all services, including advanced services, as a precondition to approving its Application. Bell Atlantic would have the Commission rely on its untested and uncertain Performance Assurance Plan to support approval of its Application. The incentives of Section 271 in creating an open market, however, should not be replaced by Bell Atlantic's Performance Assurance Plan. Prism and other competitors should not be required to hang their business plan on the hope that Bell Atlantic will undertake to resolve these problems once it has secured Section 271 authority. Because Bell Atlantic has not yet met its burden under Section 271, its Application should be denied.

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
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Company (d/b/a Bell Atlantic –	)	CC Docket No. 99-295
New York), Bell Atlantic Communications,	)	
Inc., NYNEX Long Distance Company,	)	
And Bell Atlantic Global Networks, Inc.	)	
For Authorization to Provide In-Region,	)	
InterLATA Services in New York	)	

**REPLY COMMENTS OF PRISM COMMUNICATION SERVICES, INC.**

Prism Communication Services, Inc. (“Prism”), on behalf of its operating subsidiary Prism New York Operations, LLC, hereby submits its Reply Comments in connection with the Commission’s Public Notice requesting comments on the Application by Bell Atlantic for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York (“Application”).<sup>1</sup> The Comments filed in this proceeding point up one very clear fact: Bell Atlantic has not met the requirements of Section 271, particularly with respect to the ordering and provisioning of unbundled network elements (“UNEs”). Given Bell Atlantic’s dismal performance record in the absence of real incentives for improvement, the Commission should not rely on Bell Atlantic’s performance assurance plan to ensure that Bell Atlantic will meet its obligations in the future, after it has been granted 271 authority.

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<sup>1</sup> In the Matter of the Application by Bell Atlantic for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, *Public Notice*, DA-99-2014 (September 29, 1999).

Accordingly, Prism urges the Commission to reject Bell Atlantic's Application and require Bell Atlantic to meet its obligations under Section 271 as a precondition to being allowed to enter the long distance market.

- A. Because Bell Atlantic must meet the requirements of Section 271 at the time it files its Application, not some undetermined time in the future, its Application must fail.

Section 271 places on the applicant the burden of proving that all of the requirements for authorization to provide in-region, interLATA services are satisfied.<sup>2</sup> The Commission has ruled that "a BOC's promises of *future* performance to address particular concerns raised by commenters have no probative value in demonstrating its *present* compliance with the requirements of Section 271 ... [w]hen a BOC files its application, it must demonstrate that it already is in full compliance with the requirements of section 271."<sup>3</sup> For example, the Commission has found that evidence demonstrating that a BOC intends to come into compliance with the requirements of Section 271 by day 90 is insufficient."<sup>4</sup>

Notwithstanding this clear precedent, Bell Atlantic submitted its 271 Application with the Commission one month after filing a hotly-contested tariff with the New York Public Service Commission ("NYPSC") and a matter of days following the NYPSC's decision to convene a collaborative aimed at alleviating the myriad of widespread

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<sup>2</sup> 47 U.S.C. § 271(d)(3); Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, 12 FCC Rcd 20543, at ¶¶ 43-44 ("*Ameritech Michigan Order*"); In the Matter of Application of BellSouth Corporation, *et al.* Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, *Memorandum Opinion and Order*, FCC 97-418 at ¶ 37 (rel. December 24, 1997) ("*Bell South Order*").

<sup>3</sup> Ameritech Michigan Order at ¶ 55; Bell South Order at 38.

<sup>4</sup> Ameritech Michigan Order at ¶ 55.

problems CLECs were experiencing, at the hands of Bell Atlantic, in offering advanced services in the New York market. On August 30, 1999, Bell Atlantic amended its Tariff 916 in the State of New York to provide for xDSL Qualified Loops and Digital Designed Loops. The amended tariff is the source of much dispute as it, *inter alia*, seeks to impose: (i) unlawful and unreasonable restrictions and conditions on the UNE loops that Bell Atlantic will make available and the uses of those UNE loops, and (ii) unreasonable UNE loop prequalification and conditioning charges. These issues directly relate to the evaluation of whether Bell Atlantic has met the fourth Checklist item, access to unbundled network elements. The NYPSC opened a proceeding to address these issues, which continues to date.

In addition, in response to the frustration expressed by a number of CLECs offering digital subscriber line (xDSL) services in the State of New York with respect to xDSL loop ordering, provisioning and maintenance, on August 10, 1999, the NYPSC convened a collaborative process involving Bell Atlantic and the xDSL service providers (the “DSL Collaborative”). The DSL Collaborative continues today to attempt to rectify the problems still facing the advanced services providers.

The on-going nature of these two proceeding points up one very clear fact: Bell Atlantic has not yet met its obligation to provide access to UNEs, specifically unbundled local loops, on terms and conditions that are just, reasonable and nondiscriminatory. If it had, these two proceedings would not exist. This fact, in and of itself, should result in the denial of Bell Atlantic’s Application.

Notwithstanding the foregoing, the NYPSC recommends that the Commission approve Bell Atlantic's Application.<sup>5</sup> The NYPSC believes that the problems that still remain will be resolved in the future through the processes and procedures that Bell Atlantic has recently instituted or will in the future as a result of the proceedings taking place at the NYPSC. For example, in concluding that Bell Atlantic meets Checklist item (iv), access to unbundled loops, while acknowledging that loop provisioning problems remain, the NYPSC states:

For concerns that remain, Bell Atlantic-NY has put in place the procedures and training to maximize effective loop ordering and provisioning, as ratified by KPMG, to provide xDSL-capable loops, and to minimize provisioning postponements and local service request confirmation delays and inaccuracies due to Bell Atlantic-NY process problems.<sup>6</sup>

In effect, the NYPSC believes that the new processes and procedures will work to reduce the problems being encountered every day by advanced service providers.<sup>7</sup> The fact remains, however, that the problems still exist.

Although Prism appreciates and fully supports the efforts of the NYPSC in resolving these issues in a timely and efficient manner, and equally hopes that the problems will be resolved in the future through these collaboratives and proceedings, the fact remains that as of the date on which Bell Atlantic filed its Application, it did

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<sup>5</sup> Evaluation of the New York Public Service Commission at 5.

<sup>6</sup> NYPSC Evaluation at 51.

<sup>7</sup> See, e.g., *id.* at 50-51 (“[w]e believe that the improved DSL provisioning procedures will produce fewer provisioning problems in the first place as well as ameliorate repair problems”); at 49-50 (“we believe [house and riser cable] is an area where the company can improve its performance and where a change in the provisioning process will enhance the CLEC’s ability to deliver services to their customers”); at 48 (“[t]he modified hot cut reporting proposed by Bell Atlantic-NY should resolve these CLEC problems”); at 24 (“Bell Atlantic-NY commits itself to several steps that should significantly improve flow-through rates”).



not meet the requirements of Section 271. Accordingly, Prism submits, the Application must be denied.

C. There is no evidence that that the newly-instituted processes and procedures will work.

It is, at best, less than clear whether the newly-instituted processes will work to bring about a competitive marketplace. First of all, the DSL Collaborative is only addressing the problems of a certain group, carriers providing traditional xDSL services over xDSL qualified loops. For example, the collaborative testing process agreed to by Bell Atlantic only applies if a carrier purchases a Bell Atlantic prescribed xDSL Qualified loop. As is set forth more fully in its initial Comments, because Prism uses Bell Atlantic's Basic Link to provide its advanced services rather than an xDSL Qualified loop, the collaborative testing processes would not appear to apply to Prism's loops as a matter of right. As such, Prism's order and installation nightmares continue unabated.

Moreover, the comments filed in this proceeding by carriers participating in the proceedings at the NYPSC reflect a lack of improvement since the time the proceedings were instituted. The comments are rife with examples of the ordering, provisioning and maintenance nightmares experienced by advanced services CLECs. In large part, the comments echo the exasperation of Prism, as described in its initial Comments. CLECs not obtaining "real" or timely firm order commitment ("FOC") dates, thereby delaying and disrupting the installation process.<sup>8</sup> CLECs not obtaining the preordering and

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<sup>8</sup> See, e.g., Comments of Focal Communications Corporation at 3 ("it now takes, on average, over three weeks to receive a FOC date back from BA-NY and seven weeks to get a circuit installed (with many extending beyond this period)"); Comments of Covad Communications Company at 17 ("[d]espite Bell Atlantic's commitment to provide a FOC date within 72 hours of Covad's transmission of a loop order, only 49.8% of Covad's loop orders received a FOC within 72 hours"). See also Comments of the Association for Local Telecommunications Services at 30-31 (describing Bell Atlantic's sub-par performance in providing FOCs).

ordering information they need in a timely and nondiscriminatory manner.<sup>9</sup> CLECs not getting their loops installed by Bell Atlantic on time or as ordered.<sup>10</sup> CLECs not receiving timely and accurate notification of missed due dates, thereby resulting in inefficient CLEC installations.<sup>11</sup> CLECs' frustration with the errors, long delays and greater costs caused by Bell Atlantic's manual OSS processes.<sup>12</sup> CLECs receiving

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<sup>9</sup> See, e.g., Comment of MCI WorldCom at 25-31 (describing how Bell Atlantic's OSS is incapable of providing the pre-ordering and ordering information which MCI WorldCom needs to compete); Comments of Rhythms NetConnections, Inc. at 13-15 (describing how CLECs have little to no information about the loops serving, or available to serve, customers and therefore they are hamstrung in their ability to place a loop order that will enable them to rapidly provide the greatest functionality to the end user); Comments of Northpoint Communications, Inc. at 15-16 (describing how a CLEC's service representative should have the same access to due dates and errors as Bell Atlantic's retail service representatives).

<sup>10</sup> See, e.g., Comments of Network Access Solutions at 7-8 (stating that Bell Atlantic has delivered only about 65% of NAS' loops on time and about 50% of the loops provisioned by BA-NY have not worked correctly on the first provisioning attempt); Comments of Covad Communications Company at 5 and 17 (stating that Bell Atlantic provisioned premium digital and ADSL loops on time in only 29% of loop orders and, specifically, in August 1999, only 13% of loops that Covad ordered from Bell Atlantic were provisioned on time); Comments of Rhythms NetConnections, Inc. at 21-22 (discussing how Bell Atlantic's frustratingly slow provisioning of DSL loops prevents scalable entry into the New York market by DSL competitors); Comments of Northpoint Communications, Inc. at 18 (describing the poor quality of the loops provisioned, including that Bell Atlantic fails to consistently test the loop or provide critical "demarc" information as part of the provisioning process).

<sup>11</sup> See, e.g., Comments of Northpoint Communications, Inc. at 16-17 (describing how the missed appointment notice is delivered to CLECs *after the fact*, *after* the customer has waited for the Bell Atlantic technician and *after* the DSL CLEC has contracted and arranged inside wire services that could have been rescheduled); Comments of Focal Communications Corporation at 3 (discussing how, in many cases, Bell Atlantic has missed FOC dates without advance notice to Focal of a change in schedule).

<sup>12</sup> See, e.g., Comments of MCI WorldCom at 9-19 (describing the high percentage of orders which Bell Atlantic is not meeting through a flow-through process but which are being handled on a manual basis, which affects the company's ability to compete); Comments of Northpoint Communications, Inc. at 13-15 (discussing how the manual systems and processes currently utilized by Bell Atlantic to support competitive DSL services are inherently error-prone); Comments of Network Access Solutions at 9 (addressing how Bell Atlantic's refusal to give CLECs real time electronic access to loop makeup information frustrates advanced services competition); Comments of Covad Communications Company at 27 (describing the extra manual steps that are necessary because Bell Atlantic refuses to grant CLECs access to the simple pre-ordering OSS functionality that Bell Atlantic makes available to itself); Comments of Rhythms NetConnections, Inc. at 19-21 (stating how providing CLECs with access to its loop makeup information as an electronic, fully-automated basis would allow both CLECs and Bell Atlantic to avoid the significant delay involved when CLECs have to submit repeated orders to obtain an appropriate loop to serve an end user").

discriminatory repair and maintenance work from Bell Atlantic.<sup>13</sup> CLECs being prohibited or impeded from providing services as a result of unlawful conditions and restrictions imposed by Bell Atlantic on its UNEs.<sup>14</sup> These comments are from parties who are participating in the DSL Collaborative and, yet, are not experiencing the intended results.<sup>15</sup>

Prism's own experience indicates that there has been no recent improvement in Bell Atlantic's provisioning of unbundled local loops. For example, in its initial comments, Prism discussed the problems associated with the Bell Atlantic technicians failing to test for dial tone or tag the circuit when conducting the installation. Prism's records reflect that for the week of August 13, 1999, Bell Atlantic failed to test for dial tone in 31% of the loops and Bell Atlantic failed to tag the circuit in 5% of the loops. For the week of October 10, 1999, Bell Atlantic failed to test for dial tone in 33% of the loops and Bell Atlantic failed to tag the circuit in 29% of the loops. As such, there is no improvement in Bell Atlantic testing for dial tone or tagging the circuits. This is true,

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<sup>13</sup> See, e.g., Comments of Covad Communications Company at 31-32 (describing the Catch-22 associated with Bell Atlantic's trouble ticket procedures which result in a total inability to service customers through a working loop).

<sup>14</sup> See, e.g., Comments of Network Access Solutions at 8-9 (taking issue with Bell Atlantic's ban on the use of "hot cuts" on xDSL loops); Comments of Intermedia Communications, Inc. at 8 (addressing Bell Atlantic's restrictions on the availability of DSL capable loops); Comments of Rhythms NetConnections, Inc. at 11-12 (describing the unlawful characteristics of the language in Bell Atlantic's revised 916 tariff which attempts to restrict or condition the services capable of being transmitted over Bell Atlantic's Basic Link and xDSL links); Comments of MCI WorldCom at 33 (discussing how Bell Atlantic imposes important non-price restrictions on its loops that result in DSL services being unavailable to CLECs on terms and conditions that are nondiscriminatory); Comments of the Competitive Telecommunications Association at 4-10 (addressing Bell Atlantic's limits on the availability of UNE platforms ("UNE-P") to residential and certain business customers and its restrictions of Enhanced Extended Links ("EELs") to "primarily local traffic").

<sup>15</sup> See, e.g., Comments of Northpoint Communications, Inc. at 21 ("[s]ince Northpoint began joint testing with Bell Atlantic on September 20, 1999, Bell Atlantic has only called on 40% of all Northpoint orders"); Comments of Covad Communications Company at 15 ("[e]ven with profuse assistance from Covad, Bell Atlantic can't seem to improve its performance; the process is not working").

notwithstanding that Prism has repeatedly asked Bell Atlantic to do so and provided Bell Atlantic with a toll free number to call Prism to ensure that the installation was properly completed. For these reasons, Prism submits that the Commission should be wary of relying on Bell Atlantic to improve its performance in the future in evaluating its Application.<sup>16</sup>

The Department of Justice (“Department”) supports the position that the Commission should not approve Bell Atlantic’s 271 Application until Bell Atlantic has shown that it has resolved these issues. In its Evaluation, the Department states:

These considerations lead us to the conclusion that a BOC should not be permitted to offer in-region, inter LATA services as long as important constraints on local competition remain. It is, therefore, our judgment that Bell Atlantic should not be permitted to offer such services until it demonstrates that it has solved the existing problems in its provision of access to unbundled network elements.<sup>17</sup>

Although the Department is also hopeful that the new processes and procedures will serve to alleviate the problems experienced in ordering and provisioning unbundled network elements,<sup>18</sup> the Department concludes that the Commission should not rely upon Bell Atlantic’s promises under the performance assurance plans in order to

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<sup>16</sup> See also Comments of Covad Communications Company at 18, n. 51 (“Bell Atlantic’s performance has worsened over time: 22.24% failure rate for June, 27.58% failure rate for July, and 29.02% failure rate for August”).

<sup>17</sup> Department Evaluation at 42.

<sup>18</sup> Department Evaluation at 28 (the Department is “hopeful that the new installation procedures adopted by Bell Atlantic in September 1999, and the improved performance measures that will be adopted by the NYPSC, will soon result in documented improved performance”); Department Evaluation at 36 (as regards Bell Atlantic’s Operations Support Systems (“OSS”), the Department is further “hopeful that the flow-through enhancements will be successfully implemented, that Bell Atlantic is improving its ability to comply with its change management commitments and that the permanent test environment will meet CLEC needs”).

approve Bell Atlantic's 271 Application.<sup>19</sup> In the words of the Department, "it would be unwise to rely solely on the [performance assurance plans], rather than the more powerful incentives created by Section 271, to ensure rapid completion of market-opening measures."<sup>20</sup> There is too much uncertainty about the future effectiveness of Bell Atlantic's proposed performance assurance plan to rely on that mechanism to enforce Bell Atlantic's adherence to its statutory obligations. As summarized by the Department, "[t]here are still-unresolved disputes concerning the precise definitions that are or should be used for key measures and the level of performance at which penalties would be imposed" ... [e]ven after these matters are clarified, there will be opportunities for Bell Atlantic to argue that inadequate performance should not trigger penalties."<sup>21</sup>

Like Prism, the Department turns a disbelieving eye upon Bell Atlantic's claim that if its application is granted, it will still have strong incentives through the performance assurance plans to improve its performance in these areas.<sup>22</sup> Indeed, Bell Atlantic's performance during the time when it was supposed to be making its best showing to support its 271 Application, fails. Prism shudders to think what conditions will be like when the real incentives are lifted and Prism is required to rely on Bell Atlantic's assurances that it will perform its 251 obligations.

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<sup>19</sup> Department Evaluation at 36-40.

<sup>20</sup> Department Evaluation at 36-37.

<sup>21</sup> Department Evaluation at 38-39. *See also* Comments of MCI WorldCom, Inc. at 36-43; Comments of Focal Communications Corporation of New York at 7-9; Comments of the Association for Local Telecommunications Services at 77-86; Comments of Sprint Communications Company L.P. at 22-31 and Comments of the Competitive Telecommunications Association at 31-35 (all discussing the inadequacies of Bell Atlantic's Performance Assurance Plan in ensuring future performance from Bell Atlantic).

<sup>22</sup> Department Evaluation at 36 (citing Bell Atlantic's Brief at 67-71).

C. Conclusion

As Bell Atlantic has failed to meet the requirements of Section 271, its Application must fail. The Commission must reject Bell Atlantic's Application in order to ensure the forward march of competition and all of the benefits that it will bring to the State of New York and the rest of the country.

Respectfully submitted,

**PRISM COMMUNICATION SERVICES, INC.**

By: Julie A. Kaminski  
Randall B. Lowe, Chief Legal Officer  
Julie A. Kaminski, Deputy Chief Counsel  
– Telecommunications  
Renée R. Crittendon, Deputy Chief Counsel  
– Telecommunications

November 8, 1999

### **CERTIFICATE OF SERVICE**

I, Jane L. Hall, hereby certify that a true and correct copy of the Prism's Reply Comments in Opposition of Bell Atlantic's 271 Application was hand delivered to the following individuals, this 8<sup>th</sup> day of November, 1999.

Honorable William E. Kennard  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-B201  
Washington, DC 20554

Honorable Susan Ness  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-B115  
Washington, DC 20554

Honorable Gloria Tristiani  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-C302  
Washington, DC 20554

Honorable Michael K. Powell  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-A204A  
Washington, DC 20554

Honorable Harold Furchtgott-Roth  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-A302  
Washington, DC 20554

ITS, Inc.  
1231 20<sup>th</sup> Street, NW  
Washington, D.C. 20036

Ms. Carol E. Matthey  
Chief  
Policy and Program Planning Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 5-C207  
Washington, DC 20554

Ms. Linda Kinney  
Senior Legal Advisor  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-B115  
Washington, DC 20554

Mr. Lawrence E. Strickling  
Chief  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 5-C457  
Washington, DC 20554

Mr. Kyle D. Dixon  
Legal Advisor  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-A204A  
Washington, DC 20554

Ms. Janice M. Myles  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 5-C327  
Washington, DC 20554

Staci Pies  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Mr. Paul Misener  
Chief of Staff  
Senior Legal Advisor  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-A302  
Washington, DC 20554

Mr. Paul Gallant  
Legal Advisor  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-C302  
Washington, DC 20554

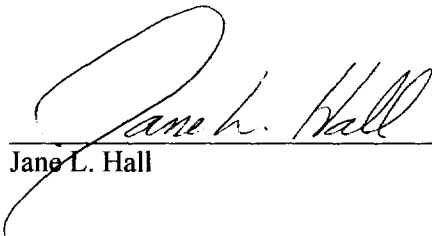
Ms. Sarah Whitsell  
Legal Advisor  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Carole Lott  
Legal Advisor  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-B201  
Washington, DC 20554

Mr. Kevin Martin  
Legal Advisor  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 8-A302  
Washington, DC 20554

\* Penny Rubin  
Managing Attorney, Federal Affairs  
State of New York Department of Public Service  
Three Empire State Plaza  
Albany, NY 12223-1350

Date: November 8, 1999

  
\_\_\_\_\_  
Jane L. Hall

\* Sent via Federal Express.